IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 733 OF 2006

Mrs. Shakuntala Parshuram Ghadge.... Petitioner

versus

Dinesh Chokha Kamble
Munish Narendra Gadiya ... Respondents.

Mr. K.K.Malpathak for the petitioner

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 13, 2006.

P.C:

1. Heard both the sides.

2. This petition is preferred by the tenant against whom the order was passed by the Jt. District Judge, Thane dismissing his appeal and confirming the order passed by the trial court for eviction of the suit premises on the ground illegal subletting as well as committing default in payment of rent for more than six months and thereby rendering him defaulter by virtue of section 12 of the Bombay Rent Act.

3. Without going into the facts of the case, it appears that the trial court has come to the conclusion that the plaintiff proved that the defendant no.2 was illegal sub tenant of defendant no.1. It was further proved that the defendant no.1 did not comply with the provisions of section 12 of the Bombay Rent Act and as such he was held to be defaulter in law in payment of arrears of rent and as such decree came to be passed on both the counts. An appeal was carried to the District Court, Thane. The learned District Judge confirmed the findings recorded by the trial court holding that the petitioner willfully defaulted the rent and it was also proved that the defendant no.2 was illegal subtenant in the premises, at the behest of defendant no.1 and as such decree came to be passed and appeal came to be dismissed. Hence the present petition.

4. I perused the entire judgment of both the courts below. The learned counsel for the petitioner fairly submitted that there was technical defect, on the part of the tenant that as contemplated by section 12(1) of the Bombay Rent Act he did not comply with the mandatory provisions and therefore in the lower court he had filed affidavit in support of his submission that he was not defaulter and demand notice was bad in law, and without proper application under the provisions of Order 41 Rule 27 of CPC for seeking

permission to lead additional evidence either before the appeallate court or seeking remand for that purpose to the trial court. However, the evidence cannot be lead by affidavit in order to fill in the lacuna which was remained to be filled in only by proper evidence at the proper stage.

5. However, facts remains that the courts below have rightly concluded that defendant no.1 has illegally sublet the suit premises to defendant no.2, and decree came to be passed on the basis of sufficient and proper evidence. In view of this position, I do not intend to interfere in the judgment of the lower court as there is no merit in this petition. Hence the petition stands dismissed.

6. At this stage the learned counsel for the petitioner requests that some time should be granted for vacating the suit premises. In view of the facts and circumstances, time of three months is granted from the date of this order to vacate the suit premises on the following conditions.

a) That he shall furnish the undertaking to that effect to this court within two weeks from the date of this order.

b) All the adult members of the petitioner's family shall be party to the said undertaking to be furnished to the court.

c) The petitioner shall not create any third party interest in the suit premises/property during the said period.

With these directions the petition stands dismissed in limine.

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